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April 29, 2024

## **Via Email and ECF**

Honorable Freda L. Wolfson, U.S.D.J.  
Lowenstein Sandler LLP  
One Lowenstein Drive  
Roseland, NJ 07068

**Re: Motion to Enforce Order Regarding Production of Documents  
Related to SaveOnSP's Adapt Program  
*Johnson & Johnson Health Care Systems Inc. v. Save On SP, LLC*,  
Civil Action No. 22-2632 (JKS) (CLW)**

Dear Judge Wolfson:

On behalf of JJHCS, we move to enforce this Court's April 10, 2024 Order compelling SaveOnSP to produce documents regarding its "Adapt" program. Less than a month ago, Your Honor ordered SaveOnSP to produce these documents. SaveOnSP's refusal to do so is in direct defiance of this Order. *See* Apr. 10, 2024 Order at 6.

By way of background, JJHCS moved to compel production of documents related to SaveOnSP's new high-deductible health plan offering that had the potential to increase annual out-of-pocket costs by thousands of dollars for certain patients. *See* Mar. 6, 2024 Mot. to Compel, at 4. After proposing search terms to SaveOnSP, although before moving to compel, JJHCS learned from newly produced SaveOnSP documents that SaveOnSP dubbed the new high-deductible health plan

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offering “Adapt.” *Id.* Thus, in light of this new information, JJHCS specifically stated in its motion to compel that “SaveOnSP should include this ‘Adapt’ offering nomenclature in its searches for responsive documents” if “the Court grant[ed] JJHCS’s motion.” *Id.* at 4 n.4.

The Court granted JJHCS’s motion to compel. Your Honor specifically explained that the requests at issue in JJHCS’s motion “seek to search for documents that are tailored to . . . the so-called Adapt program.” Apr. 10, 2024 Order, at 6. Your Honor ordered SaveOnSP to produce those documents by April 30. *Id.* In the wake of Your Honor’s order, JJHCS wrote to SaveOnSP to propose a search term for Adapt-related documents.<sup>1</sup> Ex. 1 (Apr. 12, 2024 Ltr. from J. Long to H. Miles), at 3. SaveOnSP stalled and repeatedly failed to respond to JJHCS’s requests. *See, e.g.*, Ex. 2 at 5 (Apr. 16, 2024 email from M. Nelson to J. Long representing that SaveOnSP was “running the [Adapt] term that [JJHCS] proposed”); *id.* at 4 (Apr. 22, 2024 email from G. LoBiondo to M. Nelson reminding SaveOnSP of the “court order [requiring] it to produce documents regarding its Adapt program”); *id.* (Apr. 25, 2024 email from G. LoBiondo to M. Nelson characterizing SaveOnSP’s “stonewalling as a violation of Judge Wolfson’s clear order” and declaring intention to “seek the Court’s intervention” if SaveOnSP continued to fail to respond). SaveOnSP also ignored JJHCS’s request to meet and confer regarding the Adapt search term. *See* Ex. 2 at 5–6 (Apr. 16, 2024 email from J. Long to M. Nelson proposing a meet and confer regarding the Adapt search term); *id.* at 5 (Apr. 16, 2024 response from M. Nelson to J. Long disregarding that request).

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<sup>1</sup> The proposed term is (“Adapt” w/50 (“High Deductible Health Plan” OR HDHP OR HSA OR “Health Savings Account” OR copay\* OR co-pay\* OR OOP OR MOOP OR “out-of-pocket” OR “out of pocket” OR deductible\* OR DED OR co-ins\* OR coins\* OR “patient cost\*” OR “cost share” OR “patient obligation\*” OR “financial obligation\*” OR “final cost”)).

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On April 26, 2024—after two weeks of letters and emails from JJHCS and just four days before Your Honor’s deadline for SaveOnSP to produce Adapt-related documents—SaveOnSP finally admitted that it is refusing to produce any documents responsive to JJHCS’s proposed Adapt search term. Ex. 2 at 1–3 (April 26, 2024 email from M. Nussbaum to G. LoBiondo). As a basis for this refusal, SaveOnSP claimed that “[i]f [JJHCS] wanted to include its new ‘Adapt’ search term in its motion, it could have proposed the term to SaveOn in advance of filing [its motion].” *Id.* SaveOnSP later acknowledged, after being pressed by JJHCS to disclose the volume of documents at issue, that the proposed term would require it to review only 3,627 additional documents. *Id.* at 2.

SaveOnSP’s refusal to produce Adapt-related documents is untenable. Your Honor’s Order could not be clearer: JJHCS’s Requests “seek to search for documents [regarding the] so-called Adapt program,” and SaveOnSP must produce those relevant documents. Apr. 10, 2024 Order at 6. And SaveOnSP has no credible argument that this production would be unduly burdensome. In the context of these very Requests, Your Honor held that “5,000 is not a prohibitive number of documents.” *Id.* Even in SaveOnSP’s through-the-looking-glass understanding of its discovery obligations—in which an order to produce “documents [regarding the] Adapt program” somehow does not require it to produce documents regarding the Adapt program—3,627 is less than 5,000.

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For the foregoing reasons, we request that Your Honor enforce your prior Order and compel SaveOnSP to produce all documents regarding the Adapt program that are responsive to JJHCS’s proposed search term. Because this motion presents a straightforward question of compliance with Your Honor’s prior order, JJHCS contends that it can be resolved without oral argument. We appreciate Your Honor’s consideration of this matter.

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Respectfully submitted,

/s/ Katherine M. Lieb  
Katherine M. Lieb

cc: All counsel of record for SaveOnSP